

1 Terrence J. Donahue
Chapter 7 Trustee
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The Honorable Paul B. Snyder
Chapter 7
Hearing Date: April 24, 2007
Hearing Time: 9:30 a.m.
Response Date: April 17, 2007
Hearing Location: Tacoma, WA

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7 IN THE UNITED STATES BANKRUPTCY COURT
8 IN AND FOR THE WESTERN DISTRICT OF WASHINGTON AT TACOMA

9 In Re:

10 DEBORAH JOY MATTHEWS,

11 Debtor.

NO. 04-42330-PHB

MOTION TO APPROVE
SETTLEMENT OF PERSONAL
INJURY CLAIM AND TO APPROVE
PAYMENT OF SPECIAL COUNSEL'S
FEES AND COSTS AND
SUBROGATION

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13 **COMES NOW** Terrence J. Donahue, duly appointed and acting Chapter 7 Trustee
14 for the above-referenced bankruptcy estate, and moves the Court to approve settlement of a
15 personal injury claim pursuant to FRBP 9019.

16 **BACKGROUND**

17 This bankruptcy proceeding was originally filed on March 9, 2004, as a Chapter 7.

18 Deborah Joy Matthews is "Debtor" herein.

19 Terrence J. Donahue is the duly appointed and acting Chapter 7 Trustee ("Trustee").

20 Debtor had an opening and ongoing personal injury matter which was not disclosed in
21 Debtor's bankruptcy schedules nor disclosed at the above-referenced 341 meeting. Trustee
22 was contacted by Daniel H. Haire, attorney at law, on September 26, 2005, advising Trustee
23 of the pending personal injury claim. The personal injury claim commenced on January 4,
24 2004, approximately two (2) months prior to the bankruptcy filing.

25 By Motion dated October 10, 2006, the United States Trustee moved to reopen the
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MOTION TO APPROVE SETTLEMENT OF PERSONAL
INJURY CLAIM AND TO APPROVE PAYMENT OF
SPECIAL COUNSEL'S FEES AND COSTS AND
SUBROGATION - 1

1 case and the *Ex Parte* Order Reopening Chapter 7 Case was entered on October 12, 2006
2 (*Docket No. 11*). The United States Trustee was authorized to appoint a trustee in the matter.
3 Upon the reopening of the case, the Notice of Appointment of Trustee was entered on
4 October 13, 2006, appointing the undersigned as Chapter 7 Trustee (*Docket No. 12*).

5 Debtors' **Amended** Schedule B—Personal Property identifies a personal injury claim
6 which occurred on or around January 4, 2004. Debtors' **Amended** Schedule C—Property
7 Claimed as Exempt lists the personal injury claim and asserts an exemption under 11 U.S.C.
8 § 522(d)(11)(D) for \$18,450.00 and under 11 U.S.C. § (d)(5) for \$10,095.00 (*Docket No. 21*).

9 Trustee has objected to Debtor's exemptions and intends to object to any exemption
10 amount based upon Debtor's failure to disclose the claim (*Docket No. 23*).

11 A fee agreement was signed by Debtor with Daniel H. Haire, attorney at law. Mr.
12 Haire declined representation of Trustee. However, Mr. Haire did incur costs in the amount
13 of \$481.42.

14 Debtor executed a fee agreement with the firm of Orlandini & Waldron and John
15 Orlandini. A copy of which is attached to the Declaration of Disinterest (*Docket No. 16*)
16 executed by Mr. Orlandini. The fee agreement signed by Debtor states a one-third (1/3)
17 contingency amount. The source of payment will be the proceeds generated from the
18 personal injury claim. The net proceeds of which are not subject to any liens or
19 encumbrances except as otherwise provided below. Additional fees and expenses are not
20 expected to be incurred.

21 Mr. Orlandini received a settlement offer of \$45,000.00 for the personal injury claim.
22 Upon the advice of Mr. Orlandini, Trustee has agreed to seek approval of the settlement
23 amount of \$45,000.00.

24 A copy of the proposed Final Accounting & Distribution of Funds is attached hereto
25 as **Exhibit A** and incorporated herein by this reference.

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MOTION TO APPROVE SETTLEMENT OF MEDICAL
MALPRACTICE CLAIM AND TO APPROVE PAYMENT
OF SPECIAL COUNSEL'S FEES AND COSTS AND
SUBROGATION - 2

1 In this regard, Trustee seeks approval to settle Debtor's personal injury claim for
2 \$45,000.00 and to pay therefrom Mr. Orlandini's attorneys' fees of \$15,000.00 and costs of
3 \$269.25 and to pay costs to Mr. Haire in the amount of \$481.42 and subrogation to Group
4 Health Cooperative in the amount of \$4,090.86. The balance will be held by Trustee pending
5 further court order.

6 Trustee feels that the settlement is reasonable in light of the possible litigation issues
7 and costs and uncertainty of litigation and it is in the best interest of the estate and therefor
8 Trustee seeks approval to **a)** settle the personal injury claim for \$45,000.00; **b)** execute any
9 necessary releases in Trustee's discretion to facilitate the settlement; **c)** pay to Orlandini &
10 Waldron the contingency fee of \$15,000.00 and costs of \$269.25; **d)** pay to Daniel H. Haire
11 his costs of \$481.42; **e)** pay to Group Health Cooperative its subrogation amount of
12 \$4,090.86; and **f)** the balance of \$25,158.47 to Trustee for administration in this bankruptcy
13 estate.

14 DATED this 28th day of March, 2007.

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16 By: /s/ Terrence J. Donahue
17 Terrence J. Donahue, WSBA #15193
18 Chapter 7 Trustee
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MOTION TO APPROVE SETTLEMENT OF MEDICAL
MALPRACTICE CLAIM AND TO APPROVE PAYMENT
OF SPECIAL COUNSEL'S FEES AND COSTS AND
SUBROGATION - 3